

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1063 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BAROT SURESHKUMAR JEETSING

Versus

STATE OF GUJARAT

Appearance:

MR AM PAREKH for Petitioner
MR HH PATEL, APP for Respondent No. 1, 3
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/02/2001

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. By this petition under Article 226 of the Constitution, the petitioner is challenging the order dated 31st July 2000 of the Sub Divisional Magistrate (B), Mehsana in Externment Case No.6/2000 which order has been confirmed in appeal by the Government in Appeal No.24/2000 decided on 19.10.2000 and that order has also been challenged.

#. Under the order of the Sub Divisional Magistrate (B), Mehsana, the petitioner was externed from Districts of Mehsana, Patan, Banaskantha, Gandhinagar, Sabarkantha, Ahmedabad City and Rural for a period of two years.

#. Only contention raised by learned counsel for the petitioner is that the statements of witnesses which are alleged to have been recorded by that officer do not refer that the petitioner is doing illegal activities in the said areas and therefore that officer has not given reasons for externment of the petitioner from the adjoining Districts. In support of this contention, in the petition and more particularly in para-D, the petitioner placed reliance on the decision reported in, "_____/2000". After completing the arguments, when the judgment was dictated, the learned counsel for the petitioner sent xerox copy of the decision of this court in the case of Dafer Rahman Zarar v. State of Gujarat & Ors. reported in 1999(1) GLH 425 through my JAMADAR/CHOBDAR. It is most unfair, undesirable and not befitting to the profession of the advocates that after arguments are completed and decisions are dictated by the court, xerox copy of the judgment is given which was not cited and relied upon during the course of arguments. Though in view of these facts, I could have not taken note of this decision but before typing of this order, xerox copy of this judgment has been given, I have considered it but I do not find any reason to change my decision which I pronounced.

#. The decision on which reliance has been placed in the writ petition in paragraph-5(D), I am constrained to observe that the counsel for the petitioner has not bothered to see and go through the contents of the petition before presenting the same in the court. There may be second possibility that the counsel for the petitioner would not have himself dictated this petition. In fact, no decision has been cited and this reference made in this paragraph is difficult to appreciate. The advocate should have been careful before making pleadings and more particularly when he relied on some decision of

the court. The details of the decision are to be given but that has not been done. In the case of Dafer Rahman Zarar v. State of Gujarat & Ors. (supra), this court held that where the period and area of operation of the activities of the person concerned are not mentioned in the show cause notice, it renders the show cause notice vague and the proceedings drawn thereon invalid. This reported decision of this court is of little help to the petitioner in this matter. The order of the Sub Divisional Magistrate (B), Mehsana, is appealable. This order has been challenged by petitioner by filing appeal to the State Government. This appeal has been dismissed. Under Article 226 of the Constitution of India, it is not open to the litigants to raise contentions and grounds to challenge the order which was appealable and appeal has also been filed unless the same are raised in the memo of appeal and during the course of arguments in appeal. It is not the case of the petitioner that this contention has been raised by him in the memo of appeal and also pressed during the course of arguments in the appeal. When the memo of appeal is not produced and moreover, it is also not the case of the petitioner that such ground has been raised in the appellate court, this is nothing but only a new ground which has been raised and it cannot be permitted to be raised.

#. Otherwise also, the petitioner has failed to make out any ground to permit him to raise all these contentions. Even if the matter is considered from another angle, still we can reach to the same conclusion. The period and area of operation of activities of the person who has been ordered to be externed are to be mentioned in the notice as what we can gather from the judgment of this court in the case of Dafer Rahman Zarar v. State of Gujarat & ors. (supra). The consequence of not mentioning of the aforesaid needs to be noticed and certainly is fatal to the action taken by the Sub Divisional Magistrate (B), Mehsana and may render the proceedings invalid. What for these things are to be mentioned in the show cause notice is another aspect which needs to be considered. These things are to be mentioned in the show cause notice so that the person concerned may have an opportunity to make his representation. Non mentioning of such material things in some cases may result in deprivation of right of making effective representation against the proposed action of externment of that person from the District or Districts of the State. Non mentioning of these things may put the person concerned in some difficulty to make his effective representation, it is the first stage where he has to make this grievance to the authority concerned and not to

keep this in a pocket as a ground to be encashed at the stage in the proceedings under Article 226 of the Constitution, i.e. after even affirmance of the order of the Sub Divisional Magistrate (B), Mehsana, by the appellate authority. This conduct of the petitioner itself is sufficient for dismissal of this petition. This grievance is not made at the appropriate stage, i.e. in reply to the show cause notice and in the memo of appeal and therefrom it can be presumed and assumed and inferred that the petitioner had no difficulty whatsoever to make his effective representation against the proposed action of his externment from the Districts in question. From this fact on which there is no dispute, this is nothing but only a ground made at this stage for the sake of ground. It is not a case where the petitioner has felt any difficulty to give reply to the show cause notice and interference of this court is not called for in the orders passed by the Sub Divisional Magistrate (B) Mehsana and the State Government, as otherwise also, I do not find any perversity in both the orders impugned in this special criminal application.

#. In the result, this special criminal application fails and the same is dismissed. Rule discharged. Interim relief, if any earlier granted stands vacated. No order as to costs.

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(sunil)